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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		ORIGINAL PUBLIC MATTER
Counsel for the State Bar Murray B. Greenberg Senior Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1258 Bar # 142678	Case Number(s): 16-O-10922 16-O-14144 16-O-14426	For Court use only FILED JAN 28 2019 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Arthur L. Margolis Margolis & Margolis 2000 Riverside Drive Los Angeles, CA 90039 (323) 953-8996 Bar # 57703	kwiktag® 241 071 816 	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED
In the Matter of: MARK VINCENT KAPLAN Bar # 58836 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **February 20, 1974**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **14** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):
- ☒ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
- ☐ Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. **SELECT ONE** of the costs must be paid with Respondent's membership fees for each of the following years:
- If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
- ☐ Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☐ **Prior record of discipline:**
- (a) ☐ State Bar Court case # of prior case:
- (b) ☐ Date prior discipline effective:
- (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
- (d) ☐ Degree of prior discipline:
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.

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- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 10.**
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page 10.**
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [Standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced Respondent.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.

- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond Respondent's control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of Respondent's misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Discipline, see page 11.
Prefiling Stipulation, see page 11.
Good Character, see page 11.

D. Recommended Discipline:

Stayed Suspension:

Respondent is suspended from the practice of law for **one year**, the execution of that suspension is stayed, and Respondent is placed on probation for **one year** with the following conditions.

- (1) ☒ **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) ☒ **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3) ☒ **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

- (4) ☒ **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) ☒ **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) ☒ **Quarterly and Final Reports:**
- a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
- b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
- d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) ☒ **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

- (8) ☐ **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because _____.
- (9) ☐ **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10) ☐ **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete _____ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11) ☐ **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.
- (12) ☐ **Minimum Continuing Legal Education (MCLE):** Within _____ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete _____ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE _____ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13) ☐ **Other:** Respondent must also comply with the following additional conditions of probation: _____.
- (14) ☐ **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts

and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

(15) ☐ **The following conditions are attached hereto and incorporated:**

☐ Financial Conditions

☐ Medical Conditions

☐ Substance Abuse Conditions

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

E. Other Requirements Negotiated by the Parties (Not Probation Conditions):

- (1) ☒ **Multistate Professional Responsibility Examination Within One Year:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2) ☐ **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because
- (3) ☐ **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:

MARK VINCENT KAPLAN

CASE NUMBERS:

16-O-10922, 16-O-14144, 16-O-14426

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 16-O-10922 (Complainant: C.E.)

FACTS:

1. On November 3, 2014, C.E. retained respondent to represent him in a pending marital dissolution from his spouse, R.L.
2. On November 6, 2014, respondent accepted \$15,000 as advanced legal fees from R.L. as compensation for representing C.E., without obtaining his client's informed written consent.
3. In late November 2014, C.E. terminated respondent's services and requested a refund of any unearned fees.
4. On December 5, 2014, respondent sent an invoice to C.E., which indicated that there was a balance of \$8,856.15 in unearned legal fees.
5. On October 5, 2015, new counsel for C.E. sent respondent an e-mail on C.E.'s behalf, requesting a refund of unearned fees. Respondent did not respond to this e-mail and did not issue a refund.
6. On March 23, 2016, R.L.'s attorney also sent a letter to respondent asking for a refund of unearned fees. Respondent did not respond to this letter, nor did he issue a refund.
7. C.E. passed away in early 2017.
8. On November 8, 2017, respondent issued a refund of unearned fees to R.L.

CONCLUSIONS OF LAW:

9. By accepting \$15,000 in advance legal fees from R.L. on or about November 6, 2014 for representation of C.E., without obtaining C.E.'s informed written consent to receive such compensation, respondent willfully violated the former Rules of Professional Conduct, rule 3-310(F)(effective January 1, 1993 to October 31, 2018).

10. By failing to promptly refund C.E. or R.L. any part of the \$8,856.15 received as advanced fees for legal services received from R.L. that were unearned upon termination of employment in November of 2014, respondent willfully violated the former Rules of Professional Conduct, rule 3-700(D)(2) (effective January 1, 1993 to October 31, 2018).

Case No. 16-O-14144 (Complainant: Jake Weber)

FACTS:

11. Jake Weber ("Weber") retained respondent's legal services in 2012 to represent him in child custody and support matter.

12. Between July 2012 and June 2015, Weber paid respondent \$126,402.93 in advanced legal fees.

13. On February 10, 2016, respondent issued an invoice to Weber, showing a balance of unearned fees in the amount of \$9,822.25.

14. On February 17, 2016, Weber terminated respondent's services and requested a refund of the \$9,822.25 unearned fees.

15. Between March and May 2016, Weber emailed respondent and respondent's assistant regarding his request for a refund of unearned fees.

16. On August 10, 2016, Weber obtained a small claims court judgment against respondent for a refund of \$9,822.25 in unearned fees, plus \$170 in court costs.

17. In December of 2016, respondent paid Weber the amount of the judgment.

CONCLUSIONS OF LAW:

18. By failing to promptly refund Weber any part of the \$9,822.25 received as advanced fees for legal services received from Weber that were unearned upon termination of employment on February 17, 2016, respondent willfully violated the former Rules of Professional Conduct, rule 3-700(D)(2) (effective January 1, 1993 to October 31, 2018).

Case No. 16-O-14426 (Complainant: Rebecca Barragan)

FACTS:

19. On September 4, 2015, Paula Barragan retained respondent to represent her in a marital dissolution captioned *Paula M. Barragan v. Richard A. Butler*, Los Angeles Superior Court case no. BD626779.

20. On that same day, September 4, 2015, respondent accepted \$6,000 in advanced legal fees from Paula Barragan's mother, Rebecca Barragan, as compensation for representing Paula Barragan, without obtaining his client's informed written consent.

21. Between September 4, 2015 and May 2, 2016, respondent received advanced legal fees in the amount of \$265,000 on behalf his client.

22. On June 3, 2016, respondent sent an invoice to Paula Barragan, which indicated that \$106,227.67 of the advanced legal fees paid to respondent were owed to Paula Barragan.

23. On June 10, 2016, Paula Barragan terminated respondent's services via an email addressed to respondent and provided him with new counsel's contact information.

24. On June 13, 2016, Paula Barragan's new counsel sent respondent a letter informing respondent of his representation and requesting a refund of unearned fees owed to Paula Barragan. Respondent did not issue a refund of unearned fees.

25. On June 15, 2016, Paula Barragan emailed respondent and respondent's assistant requesting a refund of the unearned fees. Respondent did not issue a refund of unearned fees.

26. In December of 2016, respondent issued a refund of unearned fees to Paula Barragan.

CONCLUSIONS OF LAW:

27. By accepting \$6,000 in advance legal fees from Rebecca Barragan on or about September 4, 2015 for representation of Paula Barragan, without obtaining Paula Barragan's informed written consent to receive such compensation, respondent willfully violated the former Rules of Professional Conduct, rule 3-310(F)(effective January 1, 1993 to October 31, 2018).

28. By failing to promptly refund Paula Barragan any part of the \$106,227.67 received as advanced fees for legal services received obtained on behalf of Paula Barragan that were unearned upon termination of employment on June 10, 2016, respondent willfully violated the former Rules of Professional Conduct, rule 3-700(D)(2) (effective January 1, 1993 to October 31, 2018).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): By accepting fees from a non-client in two client matters without obtaining his clients' informed written consent and by failing to promptly refund unearned fees to three clients, respondent has committed multiple acts of misconduct. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts]; *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 526 [eight acts of misconduct, including violation of four court orders, assigned moderate aggravating weight].)

Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)): In the three matters, a failure to promptly return unearned fees resulted in the clients not having use of the funds for a considerable amount of time. Additionally, Weber had to seek a civil judgment against respondent in order to obtain a refund of unearned fees. (See generally, *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993.)

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to practice law in California on February 20, 1974 and has been active at all times since. Respondent has been discipline free for 44 years of practice from admission to the time of the misconduct committed herein and is therefore entitled to significant mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [ten years of a discipline free practice given “significant weight” in mitigation].)

Prefiling Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

Good Character: Respondent provided evidence of good character in the form of letters from eight individuals in the general and legal communities, which include four attorneys who have known respondent for more than twenty years, the Executive Director of the Samburu Project who has known the respondent for more than three years, a client who has known respondent for more than a year, a colleague that has known respondent for more than twenty years and a friend that has known respondent for eighteen years. These individuals indicated that despite the misconduct committed by respondent of which they are fully aware, they believe it to be out of his character and do not hesitate to attest to respondent's character as being a zealous advocate, dependable, professional, trustworthy, helpful, hardworking, and a philanthropic and charitable individual. Respondent additionally provided proof of his philanthropic involvement with the Samburu Project, and the Harriet Buhai Center for Family Law. The Samburu Project's Executive Director's letter indicates that respondent has not only monetarily contributed to the Samburu Project, but has also served on the Splash Bash Host Committee for the past two years.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Std. 1.7(b) and (c).)

In this matter, respondent admits to committing five acts of professional misconduct. Standard 1.7(a) requires that where a respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed." Standard 2.19 applies to respondent's acts of misconduct in accepting fees from a non-client and failing to promptly refund unearned fees. Per Std. 2.19, reproof to suspension, not to exceed three years, is the presumed sanction for a violation of a provision of the Rules of Professional Conduct not specified in the Standards.

In the instant case, respondent failed to obtain a written waiver from C.E. and Paula Barragan when he accepted fees from R.L. and Rebecca Barragan and failed to promptly return unearned fees in three client matters. Although respondent's misconduct is further aggravated by multiple acts of misconduct and the harm caused to his clients, it is greatly mitigated by 44 years of a discipline free practice, entering into a pretrial stipulation and good character. Therefore stayed suspension is appropriate here and will achieve the purposes of discipline expressed in Std. 1.1, including protection of the public, maintenance of high professional standards, and preservation of public confidence in the legal profession. (Std. 1.1.)

Case law is consistent with this level of discipline. In *Bach v. State Bar* (1991) 52 Cal.3d 1201, the attorney was retained to represent his client in dissolution of marriage. The client paid the attorney in *Bach* an advance fee of \$3,000. The attorney thereafter failed to perform and failed to communicate with his client over the course of two years, improperly withdrew his representation and failed to return unearned fees, requiring his client to obtain an arbitration judgment in the amount of \$2,000. The attorney also failed to cooperate with the State Bar investigation. The Review Department found the attorney's lack of insight in aggravation, but gave the attorney mitigating credit for his 20 years of discipline free practice. On review, the Supreme Court of California adopted the former, volunteer Review Department's discipline recommendation and ordered that the attorney be suspended for one year, stayed, with probation for one year on conditions including actual suspension for thirty days and until restitution was made to the client.

Like *Bach*, respondent's misconduct in failing to promptly refund unearned fees to his clients prevented the clients from use of their own money and required that one of his clients obtain a civil small claims judgment against respondent in order to obtain a refund of unearned fees. Similar to *Bach*, respondent is entitled to significant mitigation for his 44 years of a discipline free practice. Unlike *Bach*, respondent committed multiple acts of misconduct in three different client matters as opposed to one client matter, but respondent's misconduct does not include a performance related violation, improper withdrawal or a failure to cooperate with a State Bar investigation and is entitled to further mitigation for entering into a pretrial stipulation and for his good character. Thus, discipline somewhat less severe than *Bach* is warranted.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of December 13, 2018, the discipline costs in this matter are \$9,900. Respondent further acknowledges

that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

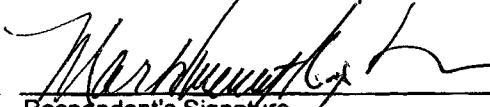
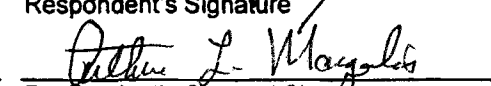
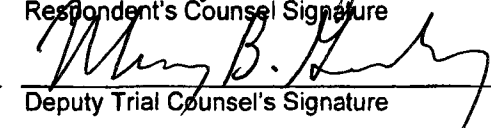
Respondent may not receive MCLE credit for completion of State Bar Ethics School ordered as a condition of probation. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: MARK VINCENT KAPLAN	Case Number(s): 16-O-10922 16-O-14144 16-O-14426
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>1/11/19</u> Date	<u></u> Respondent's Signature	<u>Mark Vincent Kaplan</u> Print Name
<u>1/14/19</u> Date	<u></u> Respondent's Counsel Signature	<u>Arthur L. Margolis</u> Print Name
<u>1/14/19</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Murray B. Greenberg</u> Print Name

(Do not write above this line.)

In the Matter of: Mark Vincent Kaplan	Case Number(s): 16-O-10922 16-O-14144 16-O-14426
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STAYED SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order.** (See Cal. Rules of Court, rule 9.18(a).)

January 28, 2019
Date

Cynthia Valenzuela
CYNTHIA VALENZUELA
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on January 28, 2019, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

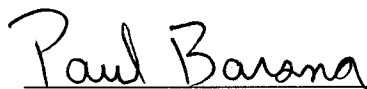
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MURRAY B. GREENBERG, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 28, 2019.



Paul Barona
Court Specialist
State Bar Court